

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RICHARD CAPRI,

Plaintiff,

v.

STEVE SISOLAK, *et al.*,

Defendants.

Case No. 3:22-cv-00514-MMD-CLB

ORDER

Plaintiff Richard Capri brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 1-1.) On November 18, 2022, the Court ordered Capri to file a fully complete application to proceed *in forma pauperis* (“IFP Application”) or pay the full \$402 filing fee on or before January 17, 2023. (ECF No. 3.) The Court warned Capri that the action could be dismissed if he failed to file a fully complete IFP Application with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 2.) That deadline expired and Capri did not file a fully complete IFP Application, pay the full \$402 filing fee, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an

1 action on one of these grounds, the Court must consider: (1) the public's interest in
2 expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk
3 of prejudice to Defendants; (4) the public policy favoring disposition of cases on their
4 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine*
5 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation
7 and the Court's interest in managing its docket, weigh in favor of dismissal of Capri's
8 claims. The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal
9 because a presumption of injury arises from the occurrence of unreasonable delay in filing
10 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
12 cases on their merits—is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can
14 be used to correct the party's failure that brought about the Court's need to consider
15 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
16 that considering less drastic alternatives *before* the party has disobeyed a court order
17 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
18 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
19 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
20 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
21 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
22 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
23 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
24 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
25 unless Capri either files a fully complete IFP Application or pays the \$402 filing fee for a
26 civil action, the only alternative is to enter a second order setting another deadline. But
27 the reality of repeating an ignored order is that it often only delays the inevitable and
28 squanders the Court's finite resources. The circumstances here do not indicate that this

1 case will be an exception: there is no hint that Capri needs additional time or evidence
2 that he did not receive the Court's order. Setting another deadline is not a meaningful
3 alternative given these circumstances. Thus, the fifth factor favors dismissal.

4 Having thoroughly considered these dismissal factors, the Court finds that they
5 weigh in favor of dismissal.

6 It is therefore ordered that this action is dismissed without prejudice based on
7 Capri's failure to file a fully complete application to proceed *in forma pauperis* or pay the
8 full \$402 filing fee in compliance with the Court's January 17, 2023, order.

9 The Clerk of Court is directed to enter judgment accordingly and close this case.
10 No other documents may be filed in this now-closed case. If Capri wishes to pursue his
11 claims, he must file a complaint in a new case.

12 DATED THIS 31st Day of January 2023.

13
14 

15 MIRANDA M. DU
16 CHIEF UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28